DOCKETED OCT 3 0 2001

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MICHELE SANTIAGO,	LED- CT 29
Plaintiff,	
vs.	01C 8293
ORLAND PARK MOTOR CARS, INC. a.k.a. MERCEDES BENZ,	JUDGE LINDBERG Plaintiff Demands Trial By Jury
Defendant.)
	MAGISTRATE JUDGE SCHENKIER

COMPLAINT AT LAW

The plaintiff, MICHELE SANTIAGO, by and through her attorneys, **DOLAN & SHANNON**, **P.C.**, complains against defendant, ORLAND PARK MOTOR CARS, INC. a.k.a.
MERCEDES BENZ, as follows:

JURISDICTION AND VENUE

- 1. This Court's jurisdiction is based upon 28 U.S.C. §§1331 and 1343, and 42 U.S.C. §2000e-5(f)(3). Supplemental jurisdiction is based upon 28 U.S.C. §1367(a).
- 2. Venue of this action properly lies in the Northern District of Illinois, Eastern Division, pursuant to 42 U.S.C. §2000e-5(f)(3) and 28 U.S.C. § 1391(b). The acts complained of and the events at issue all took place in this district.

PARTIES

3. MICHELE SANTIAGO ("SANTIAGO") is a female citizen of the United States and is and was at all relevant times a resident of Matteson, Illinois.

4. Defendant Orland Park Motor Cars, Inc., Inc. a.k.a. Mercedes Benz ("Mercedes Benz") is, and has at all relevant times been, a corporation with its principal place of business in Orland Park, Illinois. Mercedes Benz has continuously and does now employ more than twenty-five persons.

5. Since at least November, 1998, defendant Mercedes Benz has continuously been and is now an employer in an industry affecting commerce within the meaning of Section 701(b)(G) and (H) of Title VII, 42 U.S.C. § 2000-3(b)(G) and (h).

ADMINISTRATIVE PROCEDURES

6. SANTIAGO has fulfilled all conditions precedent to the institution of this action under Title VII, as amended by the Civil Rights Act of 1991. She timely filed a Charge of Discrimination against Defendant with the Equal Employment Opportunity Commission ("EEOC") and has received a Right to Sue Letter. The Charge of Discrimination is attached hereto and made part hereof as Exhibit "A." The Right to Sue Letter is attached hereto and made part hereof as Exhibit "B."

GENERAL ALLEGATIONS

- 7. Mercedes Benz is in the business of selling and servicing automobiles. Its Orland Park office consists of a sales and service division located at 8430 West 159th Street, Orland Park, Illinois.
- 8. On about October 1, 1999, Mercedes Benz hired SANTIAGO as a cashier to work in its BMW Store, at its Orland Park location. On about October 3, 1999, plaintiff was transferred to the Mercedes store.
 - 9. On August 15, 2000 SANTIAGO was transferred to a sales position.

Case: 1:01-cv-08293 Document #: 1 Filed: 10/29/01 Page 3 of 13 PageID #:3

10. SANTIAGO remained in this position until she was terminated from the company on February 17, 2001.

- 11. Rick Tattoni was at all times material to this complaint, employed by Mercedes Benz as a new car salesman.
- 12. On or about December 23, 2001, defendant, through its agents and employee Rick Tattoni, began unwelcome and unsolicited verbal harassment, unreasonable, outrageous remarks and degradation, of SANTIAGO's person. The harassment included but is not limited to the following: Exposing plaintiff to material containing bare breasted women, conduct which plaintiff found offensive in the work place and then following plaintiff around the office making harassing comments to plaintiff for expressing her disgust at Rick Tattoni's conduct, stating plaintiff was "acting like she had never seen breasts before" and "like she didn't see any that morning."
- 13. On or about December 23, 2001, SANTIAGO verbally complained of the sexual harassment to James Subka, New Car Sales Manager who then communicated SANTIAGO's complaint to Dave Nocera, General Sales Manager and Julie Blish, Office Manager. Plaintiff was subsequently advised that corrective action was taken against Rick Tattoni.
- 14. In or about December 23, 2000 through February 17, 2001, SANTIAGO's terms and conditions of employment worsened. Amongst other things, Defendant treated SANTIAGO in a demeaning manner, by frequently removing her from the sales floor so that she was not able to make sales to reach her quota, and failing to give her credit for sales she made or facilitated, contrary to policy and practice. The harassment and conduct was continuous throughout plaintiff's employment.
- 15. On February 17, 2001, Plaintiff was terminated from her sales position by James Subka. When plaintiff asked why she was terminated, she was informed that "it just wasn't working

out." When Plaintiff pressed the point, James Subka stated that Plaintiff allegedly missed work on February 16, 2001, that she was twenty minutes late for work Tuesday of that week, and that she had not made her sales quota for the month. Plaintiff defended herself stating that she had not missed work as she had been approved to work the Chicago Auto Show by Steve Rogers, Regional Manager for Mercedes Benz Corporate and was able to provide proof that she was there and that they could not determine that she had not met her sales for the month as it was only the middle of the month and James Subka had failed to record several of Plaintiff's sales for the month.

- 16. After being terminated, Plaintiff filed a charge with the EEOC on February 20, 2001. (Exhibit A).
- 17. Defendant responded to the EEOC charge alleging that plaintiff was terminated strictly based on performance.
- 18. Defendant subsequently opposed plaintiff's application for unemployment benefits, alleging that she had been dismissed for misconduct.

COUNT I DISCRIMINATION IN VIOLATION OF TITLE VII HOSTILE WORK ENVIRONMENT

- 19. SANTIAGO repeats and reasserts the allegations of paragraphs 1 through 18 as this paragraph 19.
- 20. Mercedes Benz discriminated against SANTIAGO in the terms, conditions and privileges of employment because of her sex (female), in violation of Title VII, and specifically:
 - (a) Mercedes Benz, by and through its agents, supervisors or employees, condoned or knew or should have known of the unwelcome verbal conduct of a sexual nature, and discrimination by its agents, supervisors or employees, which created an intimidating, hostile or offensive work environment and failed to take appropriate remedial measures.

- (b) Mercedes Benz, by and through its agents, supervisors or employees, placed unequal terms and conditions of employment upon SANTIAGO because she opposed the hostile and offensive work environment and because she reported sexual harassment.
- (c) The foregoing acts and conduct by agents, supervisors or employees of Mercedes Benz at Mercedes Benz's place of business were unwelcome to SANTIAGO and unreasonably interfered with SANTIAGO's work performance and seriously affected her psychological well being.
- (d) Defendant refused and failed to take prompt and appropriate action to prevent retaliatory conduct against Plaintiff after she complained about sexual harassment and discrimination.
- (e) Defendant has engaged in, through its agents, a pattern and practice of retaliation and condoning retaliation against employees who complain of sexual harassment and discrimination. The actions of Defendant were intentional and negligent when it engaged in and condoned discrimination and retaliation against Plaintiff, which has caused Plaintiff great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses and other consequential damages.
- 21. Mercedes Benz's wrongful acts, by and through its agents, were deliberate, intentional, willful, wanton, malicious, outrageous and in flagrant disregard and reckless indifference to SANTIAGO's civil rights.
 - 22. SANTIAGO has suffered damages as a result of defendants' unlawful actions.

WHEREFORE, SANTIAGO respectfully prays that this Court enter judgment in her favor and against defendant Mercedes Benz and:

- A. Permanently enjoin Mercedes Benz, its owners, officers, management personnel, employees, agents, successors and assigns and those acting in concert therewith from any conduct violating SANTIAGO's rights as secured by Title VII and the Civil Rights Act of 1964 as subsequently amended in 1991;
- B. Order Mercedes Benz to pay SANTIAGO damages in an amount in excess of \$250,000 compensate her for her injuries including but not limited to mental anguish, pain and suffering, humiliation, and her past emotional distress;
- C. Order Mercedes Benz to pay punitive damages in an amount in excess of \$250,000;

D. Order Mercedes Benz to pay SANTIAGO's costs of this action, including reasonable attorneys' fees, costs and expert witness costs under the Civil Rights Act of 1964 as subsequently amended in 1991; and

E. Grant such additional relief as the Court deems equitable and proper.

COUNT II NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

- 23. SANTIAGO repeats and reasserts the allegations of paragraphs 1 through 22 as this paragraph 23.
- 24. Defendant's conduct toward SANTIAGO was extreme, outrageous and reckless. Said conduct includes but is not limited to the aforesaid verbal and retaliatory harassment (both sexual and non-sexual).
- 25. Pursuant to Title VII of the Civil Rights Act of 1964, as subsequently amended in 1991, Defendants had a duty to ensure a safe and professional environment for plaintiff to work in, free of hostility and offensiveness. Defendants did not have a written sexual harassment policy in effect at the time plaintiff was employed, nor by the time she was terminated. Thus, Plaintiff had no means of recourse, guidance or direction as to company policies or procedures for filing a complaint or grievance.
- 26. Defendants knew that their conduct would inflict severe emotional distress or knew that their conduct was certain or substantially certain to cause SANTIAGO severe emotional distress.
- 27. Knowing, either explicitly or implicitly, that plaintiff was suffering severe emotional distress as a direct result of the conduct of defendant's agents, supervisors or employees, defendants failed to resolve the harassment in an effective manner.

Case: 1:01-cv-08293 Document #: 1 Filed: 10/29/01 Page 7 of 13 PageID #;7

28. As a result of defendants' conduct, it breached its duty causing severe emotional distress, anguish, nervous tension and anxiety.

WHEREFORE, plaintiff respectfully prays that this Court enter judgment in her favor and against all defendants and:

- A. Order defendants to pay plaintiff all economic losses she sustained and will in the future sustain by reason of the negligent infliction of emotional distress, including prejudgment interest on such amounts;
- B. Order defendants to pay plaintiff compensatory damages in an amount to be determined at trial for the severe emotional distress which she has suffered;
- C. Order defendants to pay plaintiff punitive damages in an amount to be determined at trial; and
- D. Order any further relief this Court deems just and proper.

COUNT III RETALIATION

- 29. Plaintiff repeats and reasserts the allegations in paragraphs 1 through 28 as this paragraph 29.
- 30. On December 23, 2000, Plaintiff complained about the improper actions of Rick Tattoni to her supervisor James Subka and he subsequently advised Dave Nocera and Julie Blish.
- 31. Immediately thereafter, defendant began removing plaintiff from the sales floor so she was unable to meet her quotas, failed to give her credit for sales she made, and failed to split sales on which she assisted, on contrary to customary procedure.
- 32. On February 17, 2001, Plaintiff was terminated from her sales position by James Subka. When plaintiff asked why she was terminated, she was informed that "it just wasn't working out." When Plaintiff pressed the point, James Subka stated that Plaintiff allegedly missed work on

Case: 1:01-cv-08293 Document #: 1 Filed: 10/29/01 Page 8 of 13 PageID #:8

February 16, 2001, that she was twenty minutes late for work Tuesday of that week, and that she had not made her sales quota for the month. Plaintiff defended herself stating that she had not missed work as she had been approved to work the Chicago Auto Show by Steve Rogers, Regional Manager for Mercedes Benz Corporate and was able to provide proof that she was there and that they could not determine that she had not met her sales for the month as it was only the middle of the month and James Subka had failed to record several of Plaintiff's sales for the month.

33. On information and belief, defendant continued to retaliate against plaintiff after she left their employment by failing to give neutral information on references for subsequent job contacts, which kept plaintiff out of work for a period of eight months.

WHEREFORE, Plaintiff, MICHELE SANTIAGO, demands judgment against defendant, ORLAND PARK MOTOR CARS, INC, a/k/a MERCEDES BENZ, and respectfully requests:

- A. All wages and benefits Plaintiff SANTIAGO would have received but for the discrimination, including pre-judgment interest;
- B. Compensatory damages in an amount to be determined at trial to compensate Plaintiff for the depression, humiliation, anguish, emotional distress and deprivation caused by Defendant's conduct;
- C. Defendant be required to pay pre-judgment interest to Plaintiff on these damages;
- D. A permanent injunction enjoining Defendant from engaging in discriminatory practices complained of herein;
- E. A permanent injunction requiring Defendant adopt employment practices and polices in accord and in conformity with the requirements of Title VII, 42 U.S.C. § 2000(e)

et. seq.;

- F. The court retain jurisdiction of the cause until such time as it is assured that

 Defendant has remedied the policies and practices complained herein and are

 determined to be in full compliance with the law;
- G. An award of attorney's fees, costs, and litigation expenses;
- H. Punitive damages against Defendant ORLAND PARK MOTOR CARS, INC. a/k/a
 MERCEDES BENZ as allowed by law;
- I. And such other relief as the court may deem just or equitable.

One of the Attorneys for Plaintiff

MICHELE SANTIAGO

DOLAN & SHANNON, P.C.

10 South LaSalle Street Suite 2104 Chicago, Illinois 60603 (312) 578-9500 ARDC# 6198500

Case: 1:01-cv-08293 Document #: 1 Filed: 10/2	29/01 Page 10 of 1	3 Sade	<u>U#:10</u>	JAOLAU
CHARGE OF DISCRIMINATI	GN	AGENCY	CHARG	E NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.			oc 210A11881	
Illinois Dept. of Human Rights State or local Agency, i	f any		and EEC	ЭC
NAME (Indicate Nr., Ms., Mrs.)		HOME TE	LEPHONE (Inc	clude Area Code)
Ms. Michele L. Santiago			08) 720-	-3199
STREET ADDRESS CITY, STATE AND	ZIP CODE			DATE OF BIRT
651 Oxford Avenue, Matteson, IL 60443 NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EN STATE ON LOCAL GOVERNMENT AGENCY WHO DISCRIM	MPLOYMENT AGENCY TNATED AGAINST ME	APPREN	TICESHIP	COMMITTEE
	MBER OF EMPLOYEES, ME			
Orland Park Motor Cars CITY, STATE AND	Zat A (15-100) ZIP CODE		(708)	460-0400 county
8430 W. 159th St., Orland Park, IL 604	162	TELEPHON	E NUMBER (Inc	031 Clude Area Code)
STREET ADDRESS CITY, STATE AND	ZIP CODE			COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DI	SCRIMINATI	ON TOOK PLAC
☐RACE ☐COLOR XSEX ☐RELIGION ☐NATIONAL ORIGIN		<i>EARLIEST</i>		LATEST
X RETALIATION AGE DISABILITY OTHER	R(Specify)	co) A DNIUUING AC	02/17/200 STION
THE PARTICULARS ARE (If additional space is needed, attach extra	sheet(s)):			
split-sale commissions and I was denie my share of "bones" sales. In Decembe harassment by a co-worker. In Decembe harassment to Respondent. On February I believe that I have been discriminat female, and retaliation, in violation Act of 1964, as amended.	r 2000, I was r 2000 I compl 17, 2001, I w	subjection ained tas tended the base to the base	cted to of the rminated asis of	sexual sexual d. my sex,
			0.80%	2 -
	معمدر	and the second s		
1 want this charge filed with both the EEOC and the State or N	IOTARY - (When necessary	for State	and Local Re	equirements)
local Agency, if any. I will advise the agencies if I change my	swear or affirm that I h			
processing of my charge in accordance with their procedures.	t is true to the best of SIGNATURE OF COMPLA		dge, informati	ion and belief.
didi Cara	SUBSCRIBED AND SWO (Month, day and year)	RN TO B	BEFORE ME_	THIS DATE EXHIBIT
EOC FORM 5 (Rev. 07/99)	(CHARG	NG 3	<u> </u>

Case: 1:01-cv-08293 Document #: 1 Filed: 10/29/01 Page 11 of 13 PageID #:11

Equal Employment Opportunity Commission

DISMISSAL AND NOTICE OF RIGHTS

To: Michele L. Santiago 651 Oxford Avenue Matteson, IL 60443

Certified No.: 7099 3400 0006 7300 8303

From: Equal Employment Opportunity Commission

500 West Madison

Suite 2800

Chicago, Illinois 60661

] On behalf of a person aggrieved whose identity is [

CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No.
210A11881	Evelyn Kim, Investigator	(312) 886-2389
YOUR CHARG	E IS DISMISSED FOR THE FOLLOWING REASON: 1 The facts you allege fail to state a claim under any of the statutes enforced by t	(See the additional information attached to this form.) the Commission
ı	Respondent employs less than the required number of employees.	
[Your charge was not timely filed with the Commission, i.e., you waited too lo file your charge. Because it was filed outside the time limit prescribed by law, 	•
1] You failed to provide requested information, failed or refused to appear or to be or otherwise refused to cooperate to the extent that the Commission has been used in which to respond to our final written request.	
[J The Commission has made reasonable efforts to locate you and has been unable respond to a notice sent to your last known address.	e to do so. You have had at least 30 days in which to
ĺ] The respondent has made a reasonable settlement offer which affords full relief expired since you received actual notice of this settlement offer.	f for the harm you alleged. At least 30 days have
[X] The Commission issues the following determination: Based upon the Commission to conclude that the information obtained establishes violations of the statutes with the statutes. No finding is made as to any other issues that might be const	This does not certify that the respondent is in compliance
I] Other (briefly state)	
	- NOTICE OF SUIT RIGHTS -	
[X] Title VII and/or the Americans with Disabilities Act: This is your NOTICE	OF RIGHT TO SUE, which terminates the
	Commission's processing of your charge. If you want to pursue your charge fu your charge in a court of competent jurisdiction. If you decide to sue, you mu Notice; otherwise your right to sue is lost.	
ĺ] Age Discrimination in Employment Act: This is your NOTICE OF DISMISS of your charge. If you want to pursue your charge further, you have the right competent jurisdiction. If you decide to sue, you must sue <u>WITHIN 90 DAY</u> to sue is lost.	to sue the respondent(s) named in your charge in a court of
[] Equal Pay Act (EPA): EPA suits must be brought within 2 years (3 years for	willful violations) of the alleged EPA underpayment.
		On behalf of the Commission
	D.31-01	Ship P (Consp. 1)

John P. Rowe, District Director

Enclosures

Information Sheets Copy of Charge

cc: Respondent(s)

Orland Park Motor Cars

EEOC Form 161 (Test 5/95)

OCT 3 0 2001

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

In the Matter of

Eastern Division

MICHELE SANTIAGO, -VS-ORLAND PARK MOTOR CARS, INC. a/k/a MERCEDES BENZ



Minber: 8293

JUDGE LINDBERG

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

MICHELE SANTIAGO

MAGISTRATE JUDGE SCHENKIER

(A)				(B)				
SIGN TRE LEVEL OF			- W	NAME JENNIFER O'REILLY SHELLY				
MARTIN A. DOLAN								
DOLAN & SHANNON,	P.C.			FIRM DOLAN & SHANNON, P.C				
STREET ADDRESS 10 SOUTH LASALLE S'	reet, suiti	E 2 10	4	STREET ADDRESS 10 SOUTH LASALLE STREET, SUITE 2104				
CHIVSTATEZIP CHICAGO, ILLINOIS 60603				CHICAGO, ILLINOIS 60	CHICAGO, ILLINOIS 60603			
теlephone number (312) 578-9500		<u> </u>	· · · · · · · · · · · · · · · · · · ·	TELEPHONE NUMBER (312) 578-9500		·		
IDENTIFICATION NUMBER (SEE ITEM 4 ON RE 06198500	VERSE)			IDENTIFICATION NUMBER (SEE ITEM 4 ON REV	ERSE)			
MEMBER OF TRIAL BAR?	YES .	NO	;	MEMBER OF TRIAL BAR?	YES	NO	~	
TRIAL ATTORNEY?	YES	NO		TRIAL ATTORNEY?	YES	NO	~	
				DESIGNATED AS LOCAL COUNSEL?	YES	NO	1	
(C)			(D)					
SIGNATURE	,	.,		SIGNATURE				
JERRY JOYCE		-		NAME	· · · · · · · · · · · · · · · · · · ·	<u>.</u>		
FIRM DOLAN & SHANNON,	P. <i>C</i> .	*	 	FIRM	.S.	<u> </u>		
STREET ADDRESS 10 SOUTH LASALLE S'		E 210)4	STREET ADDRESS	ISIO	3 = -	 ,	
CHICAGO, ILLINOIS 6				CITY/STATE/ZIP	25 C	- []		
TELEPHONE NUMBER (312) 578-9500				TELEPHONE NUMBER	1007 1007			
IDENTIFICATION NUMBER (SEE ITEM 4 ON RE	verse)			IDENTIFICATION NUMBER (SEE ITEM 4 ON REV				
MEMBER OF TRIAL BAR?	YES	NO	~	MEMBER OF TRIAL BAR?	YES	NO	,	
TRIAL ATTORNEY?	YES	NO	~	TRIAL ATTORNEY?	YES	МО	j	
								

Civil Cover Sheet

Page 1 of 1



UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): MICHELE SANTIAGO

County of Residence: Cook

Plaintiff's Atty:

DOLAN & SHANNON, P.C. 10 SOUTH LASALLE STREET,

SUITE 2104

CHICAGO, ILLINOIS 60603

(312) 578-9500

Defendant(s):ORLAND PARK MOTOR CARS, INC.a/k/a **MERCEDES BENZ**

County of Residence: Cook

JUDGE LINDBERG

Defendant's Atty

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

MAGISTRATE JUDGE SCHENKIER

III. Citizenship of Principle Parties

(Diversity Cases Only)

Plaintiff:- 1 Citizen of This State

Defendant: 4 IL corp or Principal place of Bus. in IL

IV. Origin:

1. Original Proceeding

V. Nature of Suit:

440 Other Civil Rights

VI.Cause of Action:

TITLE VII CIVIL RIGHTS ACT 1991 AND STATE CLAIM

VII. Requested in Complaint

Class Action: No Dollar Demand: Jury Demand: Yes

VIII. This case IS NOT a refiling of a previously dismissed case.

Date:

10-29-01

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the Back button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. Note: You may need to adjust the font size in your browser display to make the form print properly. Revised: 06/28/00